

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

TONY TUCKER	§	
v.	§	CIVIL ACTION NO. 6:12cv818
COMMISSIONER, SOCIAL SECURITY ADMINISTRATION	§	

ORDER ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE

The Report and Recommendation of the Magistrate Judge, which contains her findings, conclusions, and recommendation for the disposition of this action, has been presented for consideration. The Report and Recommendation recommends that the decision of the Commissioner be affirmed and the complaint be dismissed. Plaintiff has filed written objections.

Having made a *de novo* review of the objections filed by Plaintiff, the Court finds that the findings, conclusions and recommendation of the Magistrate Judge are correct. Plaintiff first complains that in finding his assertions not entirely credible, the ALJ failed to correctly apply the legal standards. He contends in this regard that the Magistrate Judge failed to address a number of arguments raised for the first time in his reply brief. The district court is not required to consider arguments raised for the first time in a reply brief. *Busby v. Astrue*, civil action no. 3:11cv224, 2012 WL 951696 (N.D.Tex., March 21, 2012), *citing Ghoman v. New Hampshire Insurance Co.*, 159 F.Supp.2d 928, 936 n.2 (N.D.Tex. 2001); *Madrid v. Colvin*, civil action no. 4:12cv800, 2013 WL 6641305 (N.D.Tex., December 17, 2013), *citing Lewis v. Astrue*, civil action no. 2:06cv26, 2010 WL 2243288 (N.D.Miss., June 1, 2010) and *Butler v. Social Security Administration*, 146 Fed.Appx. 752, 753, 2005 WL 2055928 (5th Cir., August 26, 2005).

Plaintiff also asserts that the ALJ erroneously stated “there is no evidence that [Plaintiff] has the limitations in his ability to stand/walk that he alleges,” pointing to findings by Dr. Rodgers and

Dr. Lester. As the Magistrate Judge noted, these findings date from before Plaintiff had knee surgery and subsequent physical therapy, and the ALJ's statement concerning "no evidence in the record" refers to evidence from after the therapy. The Magistrate Judge correctly determined that the ALJ's findings were supported by substantial evidence. Plaintiff's objections are without merit.

Having conducted a *de novo* review, this Court finds the Report and Recommendation to be correct. Therefore, Plaintiff's objections are without merit and will be overruled. The findings and conclusions of the Magistrate Judge are therefore adopted as those of the Court.

In light of the foregoing, it is

**ORDERED** that Plaintiff's objections are hereby **OVERRULED**. It is further

**ORDERED** that the decision of the Commissioner is **AFFIRMED** and the complaint is hereby **DISMISSED WITH PREJUDICE**. It is further

**ORDERED** that any motion not previously ruled on is **DENIED**.

**So ORDERED and SIGNED this 8th day of May, 2014.**

A handwritten signature in black ink, appearing to read "Leonard Davis", written over a horizontal line.

**LEONARD DAVIS**  
**UNITED STATES DISTRICT JUDGE**